

PAUL, WEISS, RIFKIND, WHARTON &amp; GARRISON LLP

1285 AVENUE OF THE AMERICAS  
NEW YORK, NEW YORK 10019-6064

TELEPHONE (212) 373-3000

LLOYD K. GARRISON (1946-1991)  
RANDOLPH E. PAUL (1946-1956)  
SIMON H. RIFKIND (1950-1995)  
LOUIS S. WEISS (1927-1950)  
JOHN F. WHARTON (1927-1977)UNIT 3601, FORTUNE PLAZA OFFICE TOWER A  
NO. 7 DONG SANHUAN ZHONGLU  
CHAO YANG DISTRICT  
BEIJING 100020  
PEOPLE'S REPUBLIC OF CHINA  
TELEPHONE (86-10) 5828-630012TH FLOOR, HONG KONG CLUB BUILDING  
3A CHATER ROAD, CENTRAL  
HONG KONG  
TELEPHONE (852) 2846-0300ALDER CASTLE  
10 NOBLE STREET  
LONDON EC2V 7JU, U.K.  
TELEPHONE (44 20) 7367 1600FUKOKU SEIMEI BUILDING  
2-2 UCHISAIWAICHO 2-CHOME  
CHIYODA-KU, TOKYO 100-0011, JAPAN  
TELEPHONE (81-3) 3597-81012001 K STREET, NW  
WASHINGTON, DC 20006-1047  
TELEPHONE (202) 223-7300500 DELAWARE AVENUE, SUITE 200  
POST OFFICE BOX 32  
WILMINGTON, DE 19899-0032  
TELEPHONE (302) 655-4410

WRITER'S DIRECT DIAL NUMBER

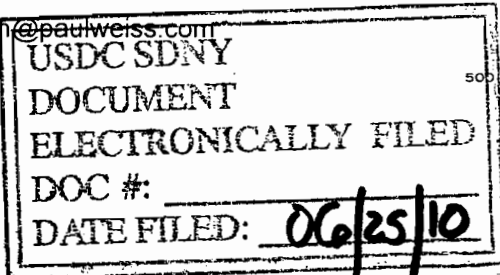
(212) 373-3086

WRITER'S DIRECT FACSIMILE

(212) 373-2037

WRITER'S DIRECT E-MAIL ADDRESS

rkaplan@paulweiss.com



June 18, 2010

MATTHEW W. ABBOTT  
ALLAN J. ARFFA  
ROBERT A. ATKINS  
JOHN F. BAUGHMAN  
LYNN B. BAYARD  
DANIEL J. BELLER  
CRAIG A. BENSON  
MITCHELL L. BERG  
MARK S. BERGMAN  
BRUCE BIRENBOIM  
H. CHRISTOPHER BOEHNING  
ANGELO BONVINO  
HENK BRANDS  
JAMES L. BROCHIN  
RICHARD J. BRONSTEIN  
DAVID W. BROWN  
SUSANNA M. BUERGEL  
PATRICK S. CAMPBELL\*  
JEANETTE K. CHAN  
YVONNE Y. F. CHAN  
LEWIS R. CLAYTON  
JAY COHEN  
KELLEY A. CORNISH  
CHARLES E. DAVIDOW  
DOUGLAS R. DAVIS  
THOMAS V. DE LA BASTIDE III  
ARIEL J. DECKELBAUM  
JAMES M. DUBIN  
ALICE BELISLE EATON  
ANDREW J. EHRLICH  
LESLIE GORDON FAGEN  
MARC FALCONE  
ANDREW C. FINCH  
ROBERTO FINZI  
PETER E. FISCH  
ROBERT C. FLEDER  
MARTIN FLUMENBAUM  
ANDREW J. FOLEY  
HARRIS B. FREIDUS  
MANUEL S. FRY  
KENNETH A. GALLO  
MICHAEL E. GERTZMAN  
PAUL D. GINSBERG  
ROBERT D. GOLDBAUM  
ERIC S. GOLDSTEIN  
ERIC GOODISON  
CHARLES H. GOOGE, JR.  
ANDREW G. GORDON  
BRUCE A. GUTENPLAN  
GAINES GWATHEY, III  
ALAN S. HALPERIN  
CLAUDIA HAMMERMAN  
GERARD E. HARPER  
BRIAN S. HERMANN  
ROBERT M. HIRSH  
MICHELLE HIRSHMAN  
JOYCE S. HUANG  
DAVID S. HUNTINGTON  
MEREDITH J. KANE  
ROBERTA A. KAPLAN  
BRAD S. KARP  
JOHN C. KENNEDY  
ALAN W. KORNBERG

\*NOT ADMITTED TO THE NEW YORK BAR

DANIEL J. KRAMER  
DAVID K. LAKHDHIR  
STEPHEN P. LAMB\*  
JOHN E. LANGE  
DANIEL J. LEFFELL  
XIAOYU GREG LIU  
JEFFREY D. MARELL  
JULIA TARVER MASON  
MARCO V. MASOTTI  
EDWIN S. MAYNARD  
DAVID W. MAYO  
ELIZABETH R. MCCOLM  
MARK F. MENDELSON  
TOBY S. MYERSON  
JOHN E. NATHAN  
KATHERINE NYARADY  
ALEX YOUNG K. OH  
JOHN J. O'NEIL  
KELLEY D. PARKER  
ROBERT P. PARKER\*  
MARC E. PERLMUTTER  
MARK F. POMERANTZ  
VALERIE E. RADWANER  
CAREY R. RAMOS  
CARL L. REISNER  
WALTER G. RICCIARDI  
WALTER RIEMAN  
RICHARD A. ROSEN  
ANDREW N. ROSENBERG  
PETER J. ROTHENBERG  
JACQUELINE P. RUBIN  
RAPHAEL M. RUSSO  
JEFFREY D. SAFERSTEIN  
JEFFREY B. SAMUELS  
DALE M. SARRO  
TERRY E. SCHIMEK  
KENNETH M. SCHNEIDER  
ROBERT B. SCHUMER  
JAMES H. SCHWAB  
STEPHEN J. SHIMSHAK  
DAVID R. SICULAR  
MOSES SILVERMAN  
STEVEN SIMKIN  
JOSEPH J. SIMONS  
MARILYN SOBEL  
TARUN M. STEWART  
ERIC ALAN STONE  
AIDAN SYNNOTT  
ROBYN F. TARNOFSKY  
JUDITH R. THOYER  
DANIEL J. TOAI  
MARK A. UNDERBERG  
LIZA M. VELAZQUEZ  
LAWRENCE G. WEE  
THEODORE V. WELLS, JR.  
BETH A. WILKINSON  
STEVEN J. WILLIAMS  
LAWRENCE I. WITDORCHIC  
JORDAN E. YARETT  
KAYE N. YOSHINO  
TONG YU  
TRACEY A. ZACCONE  
T. ROBERT ZACHOWSKI, JR.The Honorable Deborah A. Batts  
United States District Judge  
Daniel Patrick Moynihan United States Courthouse  
500 Pearl Street, Room 2510  
New York, NY 10007

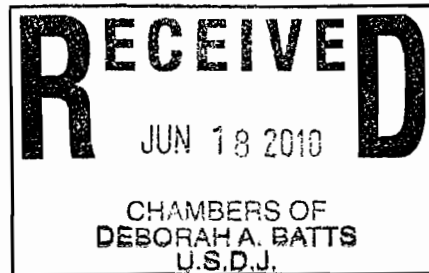
FDIC v. The McGraw Hill Cos., Inc., No. 10-cv-4421-DAB

Dear Judge Batts:

We represent Fitch, Inc., one of the defendants in the above-captioned action. We respectfully write this letter on behalf of all of the defendants in order to seek clarification concerning a procedural matter. Specifically, we request Your Honor's guidance on how the Court wishes to treat the defendants' motions to dismiss this action, which were fully briefed and filed in the Commercial Division of Supreme Court New York County (the "Commercial Division"), where this action was originally commenced prior to its removal from state court.

This action was filed by plaintiff, Riverside National Bank of Florida ("Riverside") in the Commercial Division on November 13, 2009 to recover financial losses that it claims it incurred as a result of its alleged purchase of more than twenty collateralized debt obligations ("CDOs")<sup>1</sup> between 2005 and 2007. The complaint lists seven causes of action, including common law fraud, negligent misrepresentation and

<sup>1</sup> According to the complaint (at ¶ 1), a CDO is "a structured finance product where the investors' interest and principal payments are secured by a basket of securities issued by either banks, thrifts, insurance companies, real estate investment trusts or a combination of the same."



PAUL, WEISS, RIFKIND, WHARTON &amp; GARRISON LLP

The Honorable Deborah A. Batts

2

breach of fiduciary duty. The case was assigned to Justice Charles Ramos of the Commercial Division on November 19, 2009. On December 11, 2009, the defendants filed motions to dismiss with separate briefs on behalf of the following three groups of defendants: (1) the asset managers who managed some of the CDOs' underlying collateral (the "Collateral Manager Defendants"),<sup>2</sup> (2) the investment banks who allegedly marketed and sold the CDOs (the "Seller Defendants"),<sup>3</sup> and (3) the credit rating agencies who allegedly provided credit ratings opinions with respect to the CDOs (the "Rating Agency Defendants").<sup>4</sup> Briefing on these motions to dismiss continued through April 1, 2010.<sup>5</sup> After briefing on the motions to dismiss was complete, Justice Ramos scheduled oral argument to take place on May 12, 2010.

Approximately one month before the scheduled oral argument, however, the Federal Deposit Insurance Corporation ("FDIC") was appointed as the Receiver for Riverside on April 16, 2010. On May 4, 2010, the FDIC filed an unopposed motion seeking (a) to be substituted for Riverside as the plaintiff in this action, and (b) a 90-day stay of the proceedings pursuant to 12 U.S.C. § 1821(d)(12)(A)(ii). On May 18, 2010, Justice Ramos granted the substitution motion and ordered the 90-day stay. In light of the substitution of the FDIC as the plaintiff, the defendants removed this action to the Southern District of New York on June 3, 2010 pursuant to 12 U.S.C. § 1819(b)(2)(A) and 28 U.S.C. § 1446.

In light of the above, it had been defendants' understanding and assumption that pursuant to Fed. R. Civ. P. 81(c)(2), the fully-briefed motions to dismiss filed in the Commercial Division with the motions to dismiss are now properly pending before this Court. *Cf. Frank B. Hall & Co. v. Rushmore Ins. Co.*, 92 F.R.D. 743, 745 (S.D.N.Y. 1981). Nonetheless, in three related orders filed on June 16, 2010 (copies attached), Justice Ramos deemed the defendants' motions to dismiss "withdrawn without prejudice." Although filed on June 16, the orders are dated June 2, 2010, one day before the defendants removed this action to this Court. Accordingly, defendants respectfully seek the Court's guidance as to whether Your Honor views the motions to dismiss as currently pending before this Court, whether Your Honor would instead prefer that the defendants re-file the relevant moving papers following the expiration of the stay, or whether the Court would instead like to handle this issue in another manner.

<sup>2</sup> The three Collateral Manager Defendants are Trapeza Capital Management, LLC; Taberna Capital Management, LLC; and Cohen & Company Financial Management, LLC.

<sup>3</sup> The ten Seller Defendants are FTN Financial Capital Markets; Keefe Bruyette & Woods, Inc.; Merrill Lynch, Pierce, Fenner & Smith, Inc.; ABN Amro, Inc.; Cohen & Company; Citigroup Global Markets, Inc.; Credit Suisse Securities (USA), LLC; SunTrust Robinson Humphrey, Inc.; and JPMorgan Securities Inc. Pursuant to a stipulation executed and filed on December 10, 2009, defendant JP Morgan Chase & Co. was dismissed from this action without prejudice.

<sup>4</sup> The three Rating Agency Defendants are Fitch Ratings, Inc.; Standard & Poor's, a unit of McGraw-Hill Companies, Inc.; and Moody's Investor Services, Inc.

<sup>5</sup> Attached as Exhibit A to this letter is a full list of all the pleadings submitted in connection with the motions to dismiss.

PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP

The Honorable Deborah A. Batts

3

Of course, we are happy to respond to any questions the Court may have or provide any additional information that the Court may require.

Respectfully submitted,



Roberta A. Kaplan, Esq.

MEMO ENDORSED

cc: Joel P. Laitman, Esq.  
Christopher Lometti, Esq.  
Cohen Milstein Sellers & Toll, PLLC  
150 East 52nd Street, 30th floor  
New York, New York 10022  
(212) 838-7797

Floyd Abrams, Esq.  
Adam Zurofsky, Esq.  
Cahill Gordon & Reindell LLP  
80 Pine Street  
New York, New York 10005  
(212) 701-3000

Joshua M. Rubins, Esq.  
James J. Coster, Esq.  
Satterlee Stephens Burke & Burke LLP  
230 Park Avenue, 11th Floor  
New York, New York 10169  
(212) 818-9200

Edward A. Friedman, Esq.  
Robert J. Lack, Esq.  
Friedman Kaplan Seiler & Adelman LLP  
1633 Broadway  
New York, New York 10019  
(212) 833-1100

Defendants to file  
Motions to Dismiss within  
60 days, Plaintiff's  
opposition due 60  
days thereafter, reply  
due 30 days after  
opposition is filed.  
All papers are to conform  
with the applicable rules  
of this Court. DAB/

MEMO ENDORSED  
SO ORDERED

Deborah A. Batts  
06/25/10